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C O N F I D E N T I A L SECTION 01 OF 03 BAGHDAD 000288

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SUBJECT: JUDICIAL EFFECTIVENESS RETURNS TO NINEWA

Classified By: Ninewa PRT Team Leader James Knight: 1.4 (B) and (D)

This is a Ninewa Provincial Reconstruction Team (PRT) message.

SUMMARY

¶1. (C) Major Crimes Court (MCC) judges TDY from MCC-Baghdad have begun trials of insurgent cases in Ninewa Province. This visiting judges program was proposed and facilitated by our PRT in partnership with our Coalition maneuver commands, the Chief of Police and Governor of Ninewa Province, and Embassy Baghdad's Judicial Attache Office -- but, most importantly, enjoyed the enthusiastic support of Iraq's supreme magistrate, Chief Judge of the Higher Juridical Council Medhat al-Mahmoud. Establishment of this court faced multiple hurdles which continue to be effectively addressed. The MCC court in Mosul is a critical step forward for provincial government credibility and better security in Ninewa. END
SUMMARY.

INSURGENT TRIALS BLOCKED . . .

¶2. (C) The evolution of an MCC court for Ninewa began with the urgent necessity for speedy effective handling of insurgent trials within the rule of law. Insurgent suspects detained by Iraqi Police (IP) were routinely released by judicial authorities after short detention, placing informants and IP at severe risk of retaliation and destroying credibility of Provincial governance. This key issue is insurgent-specific -- ordinary crime and civil cases are effectively managed by the judiciary in Ninewa.

. . . FOR SEVERAL REASONS

¶3. (C) Two factors were identified early by our PRT as primary issues for effectiveness in judicial proceedings for insurgents. IP officers and investigators were not well informed on rules of evidence and case preparation acceptable under Iraqi law. However, PRT-facilitated training for IPs on Iraqi law and processing evidence, while important and very useful, did not resolve the issue of dealing effectively with insurgents. Intimidation exacerbated this problem, since excessively rigid approaches to evidence and case preparation was fostered by intimidation of judges and their families.

14. (C) The Iraqi judicial system is a legacy of British rule which includes two categories of judges. Investigative judges (IJs) combine functions separated into those of prosecutor and police investigator in the U.S. IJs prepare cases for trial, and should be involved in collection of evidence. They may also undertake additional investigation after the case is presented for an IJ hearing by IP investigators. After a dossier is prepared by an IJ, trial judges render verdicts primarily by reviewing case files. Typically verdicts are rendered after short deliberation by the trial judge. Witnesses must be available for trials, but they are often not called to testify since their depositions are included in case files by investigative judges.

15. (C) To address insurgent trials in view of these factors, a proposal for dispatching visiting judges in a separate MCC court was prepared by the Ninewa PRT Rule of Law team. Judges from outside of the region are beyond the range of most intimidation and harassment. Establishing an MCC court in Mosul required identification and preparation of court facilities and judges' lodging, as well as arrangements for final preparation and transmittal of insurgent case files. These preparations were speedily accomplished through close cooperation between Ninewa's Governor and Chief of Police, the Brigade Combat Team responsible for the province, and our PRT.

16. (C) After facilities were prepared and Chief Judge Medhat was ready to dispatch a team of IJs and trial judges, a new problem emerged. The PRT visiting judge proposal had initially been met by

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relief on the part of Ninewa judges since it would alleviate the threats of assassination and extortion inevitable when dealing with insurgent cases. However, as establishment of an MCC in Mosul became probable, some of those judges began to believe that a special court of this kind called into question the competence and capability of Ninewa's judiciary.

17. (C) A series of blocking efforts were made by some senior Provincial judges, but those were overcome after a review team of Iraqi judges was ordered by Chief Judge Medhat to assess conditions in Mosul -- and concluded that Ninewa's courts were unable to deal with insurgent cases under current conditions. After that team reported back to Chief Judge Medhat, he ordered trial judges to Mosul and directed that local investigative judges and other judicial authorities cooperate.

INSURGENT TRIALS UNDERWAY

18. (C) Mosul's MCC ('MCC no. 15') is currently composed of three trial judges which arrived from Baghdad on 12 December. A prosecutor from Baghdad with special expertise in insurgent cases also accompanied the trial judges. As of 20 January, the MCC had tried 18 cases. Multiple defendants may be tried in a single case. In these 18 cases, 16 individuals have been convicted. Six death sentences, seven life sentences, and three sentences of varying terms were imposed. Six individuals were found innocent and released. There are 243 more cases pending before the MCC, including 185 cases remanded for additional consideration by the Court of Cassation in Baghdad after that court's case review (required for all major criminal cases after judgment).

19. (C) A later challenge for MCC proceedings in Mosul was

the refusal of Mosul's defense attorneys to participate in insurgent cases -- again, apparently fearing intimidation. Attorneys linked to Ninewa's Provincial Council served before the MCC while Provincial judicial and executive authorities addressed this problem. After the MCC established its credibility, local defense attorneys rejoined MCC proceedings.

AN IRAQI EFFORT

¶10. (C) The key to our success with the MCC in Mosul has been full buy-in by Iraqi judicial authorities in Baghdad and full support by Provincial police, the Governor's office, and Ninewa's Provincial Council. Coalition and PRT engagement with MCC proceedings since trials began has been kept minimal, consistent with needs to maintain PRT and Coalition logistical support for MCC operations. The MCC trial judges intend to remain in Mosul until the current case backlog is relieved, and we expect follow-on MCC trials here to assure future insurgent cases are expeditiously tried. We believe our experience in Ninewa will be a model for similar efforts elsewhere in Iraq, and our PRT is already working with Rule of Law Teams at other PRTs to promote similar programs in their provinces.

¶11. (C) The effectiveness of Mosul's MCC has also depended on discretion in publicizing its activities. Provincial authorities have announced convictions on local broadcast media, but have attributed them to the MCC without emphasizing that these trials have been undertaken in Mosul. These carefully calibrated announcements have allowed the success of the MCC to become generally known while safeguarding MCC staff.

COMMENT

¶12. (C) The courage and dedication of MCC members has been exceptional. Although the visiting judge concept is intended to minimize the threat of intimidation, these judges have all received death threats, and the MCC facility in Mosul has regularly been targeted by mortar fire. These desperate efforts to stop MCC proceedings show the importance of effective rule of law to check insurgents in

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Ninewa. END COMMENT.

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